

1 pages. Marcy Jo agrees with me. Okay.

2 MR. FOSTER: Yes.

3 MS. RUWART: Very good. There are 19 pages  
4 involved.

5 Starting on page 1 --

6 MR. VINATIERI: Carole?

7 MS. RUWART: Yes.

8 MR. VINATIERI: This is Joe.

9 Point of clarification. This came out on  
10 Friday. A lot of us have been working off the old  
11 version, so today we're working off the new version, and  
12 anything that we -- as I understand it, if we have  
13 concerns about what we see in the new version, we should  
14 talk today, but if we haven't had a chance to review  
15 them because we've been working on other things, then we  
16 have to have that in by December 23rd, which is a week  
17 from this coming Friday.

18 Then, as I understand it, based upon the  
19 comments that are made today about what we're to  
20 undertake, the staff, SBE staff, is going to go back and  
21 probably redo this, redo what we're about to look at  
22 right now.

23 And then are taxpayers, the FTB, and others  
24 going to have an opportunity then to speak to that and  
25 give written comments on that prior to the time it goes

1 in front of the Board in February?

2 MS. RUWART: That's an excellent question.  
3 Let's review.

4 Brad.

5 MR. HELLER: Basically, the plan is to  
6 incorporate all the comments that we receive and to  
7 actually have final drafts of all of the regulations  
8 prepared for the Board to consider at the February 1st  
9 meeting and to vote on whether or not we should begin  
10 the formal rule-making process at that time. So we can  
11 still take comments for that meeting. It will be a  
12 noticed agenda item, and we can certainly receive  
13 comments on that. That will be considered for that  
14 hearing.

15 But as far as comments that we're going to  
16 receive between December 23rd and the date of that  
17 hearing as far as it being incorporated into the draft  
18 that goes to the Board members, it will be very  
19 difficult to do if we're going to have it on schedule  
20 for February 1st, and it's really just a time constraint  
21 issue. Certainly had nothing to do with any intent to  
22 deprive people of an opportunity to comment.

23 And basically if there are -- if you have  
24 important issues, please be in contact with me. If  
25 there's some way we can create an extension, or if

1 there's something that's a matter dealing with a  
2 particular section or something, so that's something  
3 that staff can work with you to get some additional  
4 time, we want to work with the public to make sure that  
5 we can get everybody's comments in, because we do want  
6 the best draft and we don't want to have to rewrite  
7 things for common sense changes during the formal  
8 rule-making process.

9           So we really apologize for the short notice.  
10 There were just things that we felt really needed to be  
11 in this, in these procedures, before the Board saw the  
12 final package. And so please contact me. My phone  
13 number is (916) 324-2657. I have business cards with  
14 me. My information is all on the website as well. And  
15 please just contact me. Send me what you can. If you  
16 can even send me an Email, that will be great; we will  
17 go ahead and consider that and get it into the file as  
18 well. But if there's something else, please just  
19 contact me and I'll try to make whatever arrangements I  
20 possibly can.

21           MR. VINATIERI: Joe again.

22           And just for the record, there have been some  
23 pretty substantive comments made so far by FTB, many of  
24 which I would agree with.

25           And we've been working off the old one, the old

1 Part 4; then we have the new Part 4 on Friday. And just  
2 to be very clear, it's problematic to me, and I  
3 appreciate the need to have a time frame, but it is  
4 problematic that we are trying to undertake a major  
5 rewrite of the rules of practice or the new name in such  
6 a short time frame.

7 And so I think I will endeavor to do what I  
8 can, even at the Christmas holiday period, to be timely,  
9 but I think it is a difficult burden for people, perhaps  
10 on the other side who are not in State service, because  
11 of our things that are pending, to be timely and respond  
12 to some of the comments that you undoubtedly are going  
13 to agree to, based upon the comments that have been made  
14 here today.

15 MS. RUWART: May I just, as a matter of process  
16 here today, maybe one of the ways we can help focus this  
17 part and minimize the confusion between the two versions  
18 is at the start of each article or each significant  
19 subsection, Ian can explain the new version, what we're  
20 looking at, and how different it is from the old.

21 And we may find that there are a couple of  
22 sections where there were changes made, and we can  
23 discuss them, but others are actually pretty easy and  
24 maybe we can even refer back to the old one for people's  
25 comments. So I just thought of that.

1 MR. VINATIERI: This is Joe.

2 I would appreciate that, because I think -- I  
3 had a chance to look at this real briefly last night in  
4 a hotel room.

5 MS. RUWART: Right.

6 MR. VINATIERI: And there are some interesting  
7 things here, changes that are substantive in nature.

8 MS. RUWART: And I want to focus on the  
9 interesting changes and not get lost in the fact that it  
10 looks different.

11 So let's try this: For Section 4030, the  
12 General Requirements for briefing schedules and  
13 procedures, Ian, can you just walk us through? I notice  
14 in the old version, there is six subdivisions, (a)  
15 through (f). You've made Subdivisions (a) through (g).  
16 Can you just explain the significant differences between  
17 the two versions.

18 MR. FOSTER: Yes, this is Ian again.

19 The new version, 4030, is substantially similar  
20 to the old version. It has not changed much.

21 We have -- there's one more subdivision because  
22 we thought we could better organize it and break down  
23 the subjects better into separate subdivisions. It  
24 refers to the new electronic filing and facts provisions  
25 that we've incorporated as well.

1           Other than that, I don't believe there's any  
2 substantive changes.

3           MS. RUWART: Okay. So are there any comments  
4 on either the old or the new Subdivision (a)?

5           MS. BORGMAN: Yes, Susan Borgman, Franchise Tax  
6 Board.

7           In Sub (b) we just request that the  
8 notification be in writing upon receipt of the perfected  
9 appeal.

10          MS. RUWART: Okay.

11          MS. BORGMAN: In Subparagraph (c), current  
12 practice on it for request for extensions, we normally  
13 do not have written stipulations of the parties.  
14 Primarily, the parties agree to extend and Board  
15 Proceedings accepts the mutual agreement. That's more  
16 of a memo or an agreement instead of a formal written  
17 stipulation for an extension.

18          MR. FOSTER: And we can rephrase that. That's  
19 essentially what I was referring to is we want the  
20 parties to both send us a letter saying we want this  
21 extended.

22          MS. BORGMAN: Right, exactly.

23          MS. RUWART: You want it in writing rather than  
24 verbally, I guess?

25          MS. BORGMAN: Exactly.

1           And Subparagraph (f), the current regulations  
2 provide that the briefs can be handwritten. This  
3 version only provides for a typed version instead of  
4 handwritten. And so the in pro per taxpayers and  
5 claimants might not meet this requirement.

6           MS. RUWART: And just to be clear, you are  
7 referring to the revised version.

8           MS. BORGMAN: Yeah, the new.

9           MS. RUWART: Let's try to be clear when we're  
10 doing this.

11          MS. BORGMAN: I'm sorry.

12          MS. RUWART: Okay. That's all right. So  
13 Revised version, Subsection (f).

14          Please continue.

15          MS. BORGMAN: I would just add that handwritten  
16 submissions are permissible, but not preferable. That's  
17 all.

18          MS. RUWART: Are there any other comments on  
19 just generally 4030?

20          MR. VINATIERI: This is Joe.

21          MS. RUWART: Old or new.

22          MR. PENILLA: This is Jess Penilla.

23          Just a comment on Subsection (f). One thing I  
24 have learned from the SBE staff is that it's a lot more  
25 efficient and easier if you do not include tabs with,

1 you know, your documents because then they can drop them  
2 in the feeder and just Xerox them. And I'm thinking if  
3 we're going to transmit these files electronically, that  
4 filing the documents with tabs will also be an obstacle  
5 or problem.

6 So someone may offer some suggestive wording to  
7 make it more efficient.

8 MS. RUWART: Very good.

9 Joe, did you have a question?

10 MR. VINATIERI: Yes. I know -- I think -- I  
11 think I saw it in the original version. I had a concern  
12 about extreme hardship regarding filing a brief.

13 As I understand it, I see the new one, the new  
14 version in that same section. Did you change it  
15 to "reasonable cause"?

16 MR. FOSTER: We changed it to "reasonable  
17 cause."

18 MR. VINATIERI: Okay. Thank you.

19 MS. RUWART: Any more on old or new 4030?

20 Very good. Ian, if you could address old and  
21 new 4031, the General Briefing Schedule. This seems to  
22 cover the same topic, so we can take comments on both  
23 versions. Just, when you're referring to subsection --  
24 I'll break it down by subsection then.

25 MR. FOSTER: 4031 is substantially similar. We



1 only made one or two technical changes.

2 I believe in subsection (a) it had referred to  
3 three other briefing schedules, but now it only refers  
4 to two other briefing schedules. Other than that, it's  
5 the same.

6 MS. RUWART: Very good. So with that, we can  
7 apparently either take comments using the old or the new  
8 subsections. Any comments on subsection (a)?  
9 Subsection (b), opening briefs?

10 MR. DAVIS: Ken Davis. We're suggesting  
11 some -- and we'll try to submit some written comments on  
12 the same deadline issues that we've talked about here.  
13 But on (b)(1), "The perfected appeal shall be considered  
14 the taxpayer's opening brief," we're going to suggest  
15 some additional language so that the taxpayer knows that  
16 the opening brief shall be submitted under the format  
17 methods for delivery set forth in 4020, because  
18 everything flows from Section 4020, including the  
19 mailing provision of whether it's one copy or two  
20 copies, but at least we're suggesting throughout some of  
21 these other provisions that that kind of -- that similar  
22 language always refers back to 4020.

23 And then in (2), we're suggesting that FTB will  
24 file its opening brief, and also if -- whatever  
25 procedure we use, that we'll also mail a copy to the

1 opposing party, which is also -- which is consistent  
2 with current practice.

3 MS. RUWART: Anything else in (b)? Subdivision  
4 (c), reply briefs? This has several provisions. Let's  
5 take (c)(1) first. Any comments on (c)(1)?

6 MR. VINATIERI: This is Joe. I had indicated  
7 in the initial -- the old section or the old rule  
8 that -- or I probably should say the prior submission --  
9 that I had changed from 30 days to 90 days the time to  
10 file a reply brief.

11 The reason I had done that was to have  
12 similarity to the Franchise Tax Board in that the appeal  
13 is considered in essence for the taxpayer the initial  
14 filing.

15 Sometimes it's not until you get the FTB brief  
16 that you understand in totality what the issues are.  
17 And even though you filed your appeal, it's timely, it's  
18 perfected, et cetera, things really don't come to a  
19 head, so to speak, until you get the FTB brief.

20 My concern about having to file a reply brief  
21 within 30 days of the date that the FTB has filed its  
22 brief is that sometimes -- and we've had this  
23 experience -- 30 days is not enough time to respond to  
24 the submission of the Franchise Tax Board.

25 I had initially put 90 days just as a matter

1 of, as I said, similarity. I don't think it needs to be  
2 90 days, but I do think that 30 days pushes it too hard  
3 for the taxpayer. And I would suggest, instead of  
4 90 days, that we just -- and I understand the need to  
5 move forward and keep things moving -- I would suggest  
6 it be changed from 30 days to 60 days.

7 MS. RUWART: Okay. Any other comments on  
8 (c)(1)?

9 MR. DAVIS: Ken Davis. Franchise Tax Board is  
10 also suggesting here -- and this is, again, to help  
11 facilitate the process -- that the taxpayer may file a  
12 reply brief, obviously, with the Board and mail a copy  
13 to the opposing party, which in this case would be --

14 MS. RUWART: So the mailing to the opposing  
15 party, that's a generic way to comment?

16 MR. DAVIS: Right. That's the concept.

17 MS. RUWART: Great. We'll take that as a  
18 global concept.

19 MR. FOSTER: This is Ian again. Subdivision  
20 (e) of 4030, we have a general provision that directs a  
21 party filing a brief to give one copy to Board  
22 Proceedings Division and then the Board Proceedings  
23 Division is responsible for making sure that every other  
24 party has a copy.

25 MR. DANOWITZ: Could I ask for a clarification?

1 This is Steve. When the Franchise Tax Board then files  
2 its initial reply, do you also have -- you know,  
3 you'll -- the Franchise Tax Board will send a copy to  
4 the opposing party as well?

5 MR. DAVIS: Yes. That's what we're suggesting.

6 MR. DANOWITZ: So that's consistent on both  
7 sides?

8 MR. DAVIS: Yes.

9 MR. DANOWITZ: Because, I guess, all of the  
10 briefing deadlines are keyed off of when the Proceedings  
11 staff notifies us that the respective brief is --

12 MR. HELLER: That's correct.

13 MS. PELLEGRINI: This is Debbie Pellegrini. In  
14 response to what Ian said, it's almost easier for Board  
15 Proceedings to just assume the need to send, because we  
16 won't know, unless somebody actually put a cc, if it was  
17 sent or not. So that's kind of why the wording was put,  
18 so therefore, we just assumed that responsibility.

19 MS. RUWART: (c)(1)? Great. (c)(2), which has  
20 several subsections, we'll take them all at once.

21 (c)(2), that's the Franchise Tax Board reply brief.

22 MS. BORGMAN: Yes. Susan Borgman. I have a  
23 comment on subparagraph (A), reduce the current practice  
24 for Franchise Tax Board to request permission to reply  
25 from 20 days to 15 days. We think it should remain at

1 20 days. Oftentimes reply briefs from the taxpayers or  
2 claimants, usually the taxpayers, are very lengthy.  
3 This will give us enough time to make an informed  
4 decision as to whether we want to reply or not, and we  
5 would just have better information and know whether a  
6 reply is absolutely necessary.

7 MS. RUWART: Okay. Any other comments on  
8 (c)(2)? Steve?

9 MR. DANOWITZ: Yes, I think that somehow the  
10 taxpayer ought to have the right to participate in this  
11 process.

12 MR. FOSTER: You mean the right to oppose --

13 MR. DANOWITZ: The right to oppose, right,  
14 additional briefing.

15 MR. LANGSTON: I have a comment. Bruce  
16 Langston, Franchise Tax Board. You know, this has  
17 always troubled us a little bit. This sort of double  
18 you have to ask to reply and then you reply, because in  
19 the memo asking to reply, pretty much you have to spill  
20 out everything you're going to do.

21 You know, I understand the taxpayer wants to  
22 have input on that, but on the other hand, if our  
23 ability to reply is denied, I mean, you sort of  
24 back-door into us replying anyway, and the taxpayer  
25 replying, you might as well just treat it as a brief.

1           So if the goal in requiring FTB to go through  
2 this double procedure is, you know, to kind of speed  
3 things up, then every time you add another, you know,  
4 let the other party reply, let the other party reply, it  
5 lengthens the whole process.

6           So one option, if that's what we want to do, is  
7 get rid of the request to reply and just say Franchise  
8 Tax Board may reply and then, you know, that would solve  
9 the problem. And then, of course, the taxpayer would  
10 have a right to reply to the reply. So that would be an  
11 option, but . . .

12           MR. HELLER: Would FTB get to reply -- this is  
13 Bradley Heller. Would FTB reply to the reply to the  
14 reply?

15           MR. LANGSTON: And when does it stop? That's  
16 the question.

17           MR. HELLER: That's basically been our concern,  
18 not about really -- I think everybody's capable of  
19 telling when there's a need for more briefing on a  
20 particular issue. But yeah, I think we'll take all  
21 those comments under consideration. We're definitely  
22 reviewing that section and trying to streamline it as  
23 much as we can.

24           MR. JESS PINELLA: This is Jess Pinella. I  
25 have a comment on this section. I suppose this is

1 probably as good a section to bring this up.

2 One concern I have is the circumventing of the  
3 process of the briefing process. I have seen at least  
4 one occasion where FTB Legal issued an IDR to a taxpayer  
5 when it was not their turn to file a brief and they did  
6 not do it in the form of a brief. They did it in the  
7 form of an IDR, essentially questioning the ruling of  
8 the protest hearing officer and asking the taxpayer to  
9 answer questions that should have been taken care of at  
10 the audit level.

11 I did not receive a satisfactory answer from  
12 FTB's legal management when I responded to -- or I  
13 questioned FTB's attorneys. I did not receive a  
14 satisfactory answer. The answer was, well, it doesn't  
15 say that they can't do this, so we're going to allow  
16 them to send your taxpayer these requests for additional  
17 information, essentially circumventing the briefing  
18 process.

19 And when the taxpayer receives this letter in  
20 this form from the FTB, essentially saying, you know, if  
21 you don't respond to these questions, then you've got  
22 something to hide, it's very intimidating for the  
23 taxpayer.

24 So I'm very concerned about circumventing the  
25 briefing process. I think there should be something

1 affirmative in there saying that they can't do this.

2 Now, logic would tell you that we're laying out  
3 the briefing rules, and it should be clear that if  
4 you're not authorized to do this through the briefing  
5 rules, that then you can't issue these IDRs. However, I  
6 have seen it happen.

7 MS. RUWART: Thank you. Any other comments on  
8 (c)(2)? Very good. Moving on to (c)(3). It looks like  
9 it's pretty much the same as it was. Okay. Very good.

10 MR. DAVIS: Oh.

11 MS. RUWART: Go ahead.

12 MR. DAVIS: One additional.

13 We're suggesting -- this is Ken Davis.

14 Franchise Tax Board is suggesting that during  
15 the briefing process that -- and this was included in  
16 the former section 5075.1(a) -- that amicus briefs be  
17 allowed.

18 We think this helps the Board receive input  
19 from outside parties on issues that may not be addressed  
20 by the parties, if it's a significant issue that might  
21 have widespread impact.

22 So we're suggesting adding here or in some  
23 section the idea of the amicus, and so we're -- and we  
24 refer back to 5075.1.

25 MR. FOSTER: This is Ian.



1 I think we can say we agree with that. That is  
2 an inadvertent omission.

3 MS. RUWART: There's a couple more sections to  
4 go through and at the end of Article 3 -- I know we're  
5 trying to get out of here by 12:30, but I think having a  
6 five-minute break after we finish Article 3 might be  
7 good for everybody, so let's head on to finishing up  
8 Article 3.

9 Section 4032, the Briefing Schedule For  
10 Innocent Spouse Appeals.

11 Ian, do you want to talk about that a little  
12 bit?

13 MR. FOSTER: This is substantially the same as  
14 the prior version that's posted on the web in September.  
15 There were only a couple of grammatical errors that we  
16 caught and changed in there.

17 MS. RUWART: Great. So it appears we can take  
18 comments using the same old and new subdivision numbers,  
19 because they're the same.

20 Let's go to Subdivision (a), Application. Are  
21 there any comments? Very good.

22 Subdivision (b), Definitions, any comments?  
23 Very good.

24 Subdivision (c), Rights of Nonappealing Spouse,  
25 any comments?

1 MR. DAVIS: This is Ken Davis.

2 We've had some of our lawyers that have -- that  
3 work substantial -- that work primarily in this area of  
4 innocent spouse review the old section, and we wanted to  
5 compare it to the new, so we'll -- and we have some  
6 detailed comments relating to your comment about making  
7 sure the nonappealing spouse has essentially the same  
8 rights. We're going to be providing some -- some  
9 additions -- and some additions and detailed comments,  
10 and we'll submit those in writing.

11 MR. FOSTER: Very well.

12 MS. CROCETTE: This is Sabina.

13 When you are providing comments, would you say  
14 you don't support that or you do?

15 MR. DAVIS: I'm sorry. We do support that.

16 MS. CROCETTE: Okay.

17 MR. DAVIS: We're adding some additional  
18 language just to clarify the spouse who files an appeal  
19 subsequent to initial appeal at times is called the  
20 nonappealing spouse, and some additional language as  
21 well as some clarifying principles as to when the --  
22 when the Franchise Tax Board files its appeal or its  
23 reply, I guess, opening brief is the most current term.  
24 Franchise Tax Board files its opening brief after the  
25 nonappealing spouse files its -- his or her opening

1 brief. And so we have those types of procedural  
2 clarifications.

3 MS. CROCETTE: Okay.

4 MR. FOSTER: This is Ian.

5 We welcome that. And just to clarify the  
6 purpose of this briefing schedule as well, recent  
7 amendments to the innocent spouse statutes left open the  
8 undesirable possibility of never-ending appeals where  
9 one spouse wins at MTB, the other spouse appeals here  
10 and wins, then the other spouse under the statute had  
11 rights to appeal. I mean, it literally left open that  
12 possibility where it never stopped. So the purpose of  
13 this briefing schedule is to take care of everything in  
14 one appeal.

15 MS. RUWART: A concept we can all agree on, it  
16 sounds like.

17 Yes?

18 MR. KOCH: Does that mean -- does "meaningful  
19 participation" mean briefing and argument?

20 MR. FOSTER: The statute doesn't define  
21 "meaningful participation."

22 MR. KOCH: Well, I wonder if the regulation  
23 might not.

24 MR. FOSTER: We can think about that.

25 MR. KOCH: Where would you find in the

1 legislative history what the legislation meant by  
2 "meaningful participation"? I hope somebody has some  
3 better definition than that, than those words.

4 MR. HELLER: Actually the proposed regulation  
5 does allow the nonappealing spouse to file briefs and to  
6 submit additional information to oppose or support the  
7 appealing spouse, which would be odd to support, but  
8 it's possible.

9 MS. MANDEL: We have had a case.

10 MS. RUWART: Very good. I think I -- still  
11 where we all are, have we finished our comments in  
12 Subsection (d)? Okay. Very good --

13 Subsection (e), Subdivision (e) refers to reply  
14 briefs. Any comments on (e)? Okay. No comments on  
15 Subsection (e), Reply Briefs.

16 Subsection -- oh, my goodness. That's a long  
17 one. Okay. Maybe we should break down (e). Let's try  
18 (e)(1), I'm sorry, pardon me, (e)(1). No comments.  
19 Very good.

20 Subsection (e)(2), the Nonappealing Spouse's  
21 Reply Brief?

22 (e)(3), Franchise Tax Board's Reply Briefs?

23 (e)(4), if nobody files a reply brief?

24 (e)(5), Second Reply Brief of the Appealing  
25 Spouse?

1           Moving on to Subsection (f), Conformity With  
2 Federal Action. There's no -- we could do 1, 2, 3, 4,  
3 5. Does anybody have any comments on any of that? Very  
4 good. All right.

5           MR. VINATIERI: Carole?

6           MS. RUWART: Yes.

7           MR. VINATIERI: Can I just make a general  
8 statement? This is Joe.

9           MS. RUWART: Sure.

10          MR. VINATIERI: On -- on the nature of these  
11 briefs, it would probably not be a bad idea in each of  
12 these sections, whether it be Innocent Spouse or the  
13 portion prior, to maybe utilize, put actually what the  
14 names of those briefs are, just like we have in the  
15 court of appeal we have the appellant's opening brief.

16          MS. RUWART: As a definition?

17          MR. VINATIERI: Yes. It will make it a lot  
18 easier.

19          MS. RUWART: That will be very helpful.

20          MR. VINATIERI: Then we have the respondent's  
21 reply brief and then we have the appellant's reply brief  
22 and we call them AOB, etcetera, etcetera, etcetera.

23          MS. RUWART: And have it in one place on the  
24 list of all of them and then you can figure it out.

25          MR. VINATIERI: I think it would make it a lot

1 easier rather than going through appealing spouse's  
2 second reply brief, you know, all that stuff.

3 MS. RUWART: And maybe that's a good  
4 suggestion, just generally sets of definitions of  
5 defining what we're talking about.

6 MR. VINATIERI: Yes, in general.

7 MS. RUWART: I love definitions sections, so if  
8 it were up to me, I'd define them all.

9 MR. FOSTER: Very good section.

10 MS. RUWART: Moving on to Section 4033, the  
11 Simplified Briefing Schedule for the Small Tax Cases and  
12 HRA Appeals, any significant differences between the  
13 two?

14 MR. FOSTER: Yes, this is where we, in the  
15 prior version, we had 4033 for small tax cases and 4034  
16 for HRA appeals. They were pretty similar, so here we  
17 simply combined them into one regulation 4033. It's  
18 State mandatory for HRA appeals, and it's elective for  
19 taxpayers, incoming franchise taxpayers, who have no  
20 more than \$10,000 at issue.

21 And one quick thing to know, and it was true in  
22 both versions, corporations with franchise tax  
23 liabilities at issue cannot elect this section, no  
24 matter how small the liability.

25 MS. MANDEL: Did I miss a section when I came

1 in? Is that -- was there an earlier provision on the  
2 small tax cases?

3 MR. FOSTER: Yes, there was in the prior  
4 version.

5 MS. MANDEL: Oh, you're just talking prior  
6 version, not like we talked about this morning.

7 MR. FOSTER: No, no, correct.

8 MS. MANDEL: Oh, okay. Sorry.

9 MS. RUWART: That said, 4033, are there any  
10 comments in Subdivision (a), Intent?

11 MR. VINATIERI: This is Joe.

12 I had had substantial changes to the original  
13 4033 in terms of just reorganization.

14 But I looked at this briefly last night, and it  
15 looked to me like you had somewhat reorganized it along  
16 the lines that I had recommended.

17 MR. FOSTER: We had incorporated some of those  
18 changes.

19 MR. VINATIERI: Okay. Thank you.

20 MS. RUWART: Yes. And in this case actually  
21 just to be very clear, I'm working off the revised  
22 version and that's page 7 of our new document.

23 Any comments on Subsection (b), Pro Bono  
24 Representation? Okay.

25 Any comments on Subsection (c), Application, 1,

1 2, or 3?

2 MR. LANGSTON: Yes, Bruce Langston, Franchise  
3 Tax Board.

4 We have a problem with amount at issue not  
5 being more than \$10,000.

6 As we know, from amnesty and everything, we  
7 need to clarify what do you mean, what do we mean by the  
8 "amount at issue"? Do we mean the total -- in a  
9 deficiency case, is it the total deficiency amount  
10 excluding interest or including interest?

11 MR. FOSTER: This is Ian.

12 The amount at issue is defined in (c)(3).

13 MR. LANGSTON: Okay.

14 MR. FOSTER: It was in the prior version as  
15 well.

16 MS. RUWART: So just to be clear, Bruce, your  
17 comments with respect to Subdivision (c)(2)(A) --

18 MR. LANGSTON: Oh, I'm sorry, I did not read  
19 that.

20 MS. BORGMAN: Susan Borgman.

21 I did have a question about that. The amount  
22 at issue is for the entire case or what if there are  
23 multiple tax years before your Board?

24 MR. FOSTER: The way it reads now, it would be  
25 multiple tax years.



1 MR. LANGSTON: So, not each year \$10,000.

2 MR. FOSTER: I'm sorry, yes, it's the entire  
3 case.

4 MR. LANGSTON: So if you have three years that  
5 are less than \$10,000, then it has to be the entire  
6 case, so if you consolidate two small cases, you knock  
7 yourself out of this provision?

8 MR. FOSTER: Yeah, that's a good suggestion,  
9 consider by tax year.

10 MR. LANGSTON: The other issue is contested  
11 issues versus not contested issues. We have a lot of  
12 cases where it might be a million dollar assessment, but  
13 they only disagree about \$800 of it. Is that a small  
14 case?

15 MR. FOSTER: We had intended and maybe we may  
16 not have made it clear enough, but we had intended it  
17 only to be contested issues.

18 MR. LANGSTON: Okay. That would help us a lot.

19 MS. RUWART: Okay.

20 MR. PENILLA: Jess Penilla.

21 This may be repetitive. I've had cases where I  
22 have an S corporation with a number of shareholders,  
23 where they maybe each billed \$10,000, and we just heard  
24 all the cases in one day.

25 MR. LANGSTON: Bruce Langston again.

1           As long as we're on this subject, we believe  
2     that it would be helpful to include certain business  
3     entity cases. We have a lot of just very routine  
4     minimum tax cases, pass-through entity-type things. And  
5     unless there's a reason not to include business entities  
6     in this, it allows the taxpayer who has a simple case to  
7     get expedited processing. So we would suggest including  
8     business entities as well.

9           MR. FOSTER: This is Ian again.

10          Again, we can certainly try to clarify the way  
11     we wrote it, but the way we intended it is that business  
12     entities can elect this --

13          MR. LANGSTON: Okay.

14          MR. FOSTER: -- for things like minimum tax  
15     penalties and interest, but not in underlying franchise  
16     tax liability. We don't want a unitary apportionment  
17     case on the small tax provision.

18          MR. LANGSTON: That's fair.

19          MS. RUWART: Okay. Any more comments on (c),  
20     Application?

21          MR. VINATIERI: Yes, this is Joe.

22          I -- I really like this, because I think that  
23     there's a lot of people, a lot of small mom and pops,  
24     etcetera, who need their day in court, so to speak.  
25     They just need an opportunity to speak. They just need

1 due process of some sort.

2 So I think as we look at what's written here in  
3 4033, we need to kind of keep, not kind of, we need to  
4 keep that in mind.

5 When I gave my comments on the prior version, I  
6 made a comment regarding the definition of "amount at  
7 issue." And I tried to read it from the standpoint of,  
8 well, if you're an individual who just needs to  
9 be -- you need to have your day in court, we somehow  
10 need to make sure that this is reader friendly.

11 And I had a real problem with the language  
12 "Unpaid interest" blah-blah-blah, "only if the taxpayer  
13 is seeking abatement under 19104, and only to the extent  
14 of the unpaid interest accrued through the date of the  
15 FTB."

16 MS. RUWART: So, Joe, would it be fair to  
17 summarize your comments, at least with respect to HRA  
18 specific provisions and small tax provisions, we should  
19 make an extra effort to perhaps rephrase things or  
20 phrase things in a way that we might not normally in  
21 order to ensure clarity to that specific audience?

22 MR. VINATIERI: A leading question, and the  
23 answer is yes.

24 MS. RUWART: Can we move on?

25 MR. FOSTER: This is Ian.

1           And, Joe, I know it's in your written comments  
2 as well. It's interesting that you would bring up the  
3 wording of that provision. While drafting that  
4 provision, I remember being concerned about it sounding  
5 too legalistic and complicated. For the time being, I  
6 opted to go for what I thought was precise language and  
7 worry about readability later. I am worried about the  
8 readability, but I am also worried about it being  
9 precise so that it's interpreted the same way every  
10 time.

11           MR. LANGSTON: Bruce Langston.

12           I would also point out forms and instructions  
13 can be written in plain language, but the regulation has  
14 to be clear so that we know in all these different types  
15 of cases that we have whether it's going to apply or  
16 not. So I have no objection to having further forms and  
17 instructions targeted to specific audiences, but I do  
18 think we need the regulations themselves to specify so  
19 that -- mainly so that staff can know, does this case  
20 fit in here or does it fit in there?

21           I would imagine -- I can't -- I don't know that  
22 there is an HRA case that's even close to \$10,000, so I  
23 don't think it's ever going to be an issue for that or  
24 for head of household.

25           MR. FOSTER: This is mandatory for all HRA

1 cases regardless of amount.

2 MR. LANGSTON: Okay.

3 MS. RUWART: That's a good comment, too. We  
4 don't have to make these regulations do all the work.  
5 We have other ways of communicating to people.

6 MR. VINATIERI: This is Joe.

7 And I think that's a very good point because  
8 these do have to be precise, but I would just tender the  
9 opinion, or perhaps the idea, that once this is put  
10 together, that maybe the taxpayer's rights  
11 advocate looks at this specifically and have a pamphlet  
12 and some type of information that's specific and takes  
13 the language that ultimately ends up here and puts it in  
14 English that's understandable.

15 MS. RUWART: Very good.

16 Any other comments on plain English, plain  
17 language, plain anything? Very good.

18 Susan? Yes.

19 MS. BORGMAN: We will have additional comments  
20 on this section, but we'll submit them in writing next  
21 week.

22 MS. RUWART: Thank you. That will be great.

23 I'm conscious of moving along, because now  
24 we're down to an hour and 15 minutes, and I do want to  
25 give everybody at least five minutes as soon as we

1 finish this section, and we have, really, substantive  
2 things afterwards so, Subsection (d), Upon Receipt of a  
3 Perfecting Appeal, four subdivisions. Is there -- do we  
4 need to keep them -- do you want to take them (d)(1)?  
5 Let's take (d)(1). Is there any comments?

6 MS. MANDEL: This is Marcy.

7 So I'm not sure -- I mean, I have some issues  
8 with these substantive changes and how these rules would  
9 propose that the Board handle matters, not the least of  
10 which is sending everything to appeals conferences and  
11 getting D & Rs, but here you have something about  
12 waiving your right to an oral hearing before the Board  
13 automatically.

14 And a lot of people, if all they want to do is  
15 be heard, I think they're going to want to be heard by  
16 the Board members, not just some other staff lawyer.  
17 That's sometimes what we see with people who actually  
18 come and say, you know, now that I have told you  
19 everything and I've talked to all these different  
20 lawyers, I understand why FTB, you know, sent me this  
21 notice, but I just think they still -- we've had one or  
22 two that I can remember where people actually said that  
23 and said they wanted to come and unload before the Board  
24 members.

25 Even if -- I'm not sure, I guess you wrote it

1 this way to have them waive an oral hearing because  
2 statutorily this responsibility is with the Board, and  
3 you still are intending that whatever comes on a  
4 nonappearance calendar, even if you put it on  
5 nonappearance calendar, they would be entitled to come  
6 before the Board under the Open Meetings Act and address  
7 the Board for three minutes on their items if they  
8 wanted to.

9 But I just am sort of wondering where this is  
10 coming from and why -- I'm concerned about whether  
11 taxpayers would inadvertently, and I guess you're saying  
12 they won't inadvertently because you're going to make it  
13 so specific to them, they'll get a letter saying, by the  
14 way, you're giving up your rights to appear before the  
15 Board, which is sort of a half truth because of the Open  
16 Meeting Act, and I'm not quite sure, you know, where  
17 it's all coming from and why and whether it somehow  
18 results in a complete delegation application to the  
19 appeals section that might not be appropriate.

20 MR. FOSTER: This is Ian. I can answer a  
21 number of your questions. As far as where it's coming  
22 from, essentially, for a long time, we've been getting  
23 feedback from basically all sides on these sorts of  
24 issues, that they would like a small tax procedure.  
25 People thought it would be useful. And the reason we

1 had it being a waiver of the oral hearing if you elect  
2 it is because if you still go forward with a right to  
3 oral hearing, then as a practical matter, we haven't  
4 actually shortened or simplified the process very much.

5 MS. MANDEL: But why should they not have some  
6 right to go -- maybe they don't get, you know,  
7 maybe -- maybe small tax cases don't need 30 minutes  
8 before the Board, but why should they be completely  
9 precluded from appearing before the Board members and  
10 saying, you know, FTB was, assuming that things didn't  
11 go their way in the appeals conference, FTB was stupid  
12 and wrong and your appeals officer was stupid and wrong.  
13 Why should they have to rely on the Open Meetings Act,  
14 which probably none of them are aware of. That's just  
15 kind of -- kind of the question. Their hearing before  
16 the Board of Equalization on FTB matters is really their  
17 administrative trial, if you will, and on matters for  
18 which the Board is the administrator of the tax, why  
19 should the Board -- why should someone be completely  
20 precluded from making some level of oral presentation  
21 before the Board? Maybe it's not --

22 MR. LANGSTON: Well --

23 MS. MANDEL: -- a full-time period.

24 MR. LANGSTON: Bruce Langston here.

25 My suggestion is, you know, they make that



1 decision. The (d)(1) says you send them a letter saying  
2 if you elect this small provision, you don't go before  
3 the Board.

4 Now, the person who wants to go before the  
5 Board, maybe we need to clarify a little more to make it  
6 clear that they or maybe -- maybe we would add something  
7 to say, if they're unhappy with the decision, then they  
8 still could have an oral hearing, maybe that.

9 But it just seems to me that was the trade-off.  
10 That's how we can get these cases done quickly. And as  
11 long as they're informed and advised that if you go this  
12 way, you don't have an oral hearing but everything is  
13 quicker; if you go the other way, you do get an oral  
14 hearing but there's a longer briefing schedule and it's  
15 going to take longer to resolve, to me that's fair. But  
16 I understand your point also that taxpayers may not  
17 understand that.

18 MR. FOSTER: This is Ian.

19 And there is still a right that is a statutory  
20 right to a petition for rehearing, everybody in every  
21 case no matter what briefing schedule they use.

22 In a small tax, appellant is not happy with the  
23 D & R, D & R is adopted by the Board, they will file a  
24 petition for rehearing.

25 MS. MANDEL: Right, and the standard for

1 rehearing is -- is pretty strict, and they very  
2 rarely -- and they would not have the right to be heard.  
3 And if you're going to -- particularly with sort of the  
4 open meeting aspect, if you're going to preclude -- if  
5 you're going to say to someone you waive your right to a  
6 hearing to any kind of -- or the presentation before the  
7 Board members, that's not entirely true because they  
8 could come under the Open Meetings Act.

9 MR. FOSTER: The way the regulation is written  
10 right now, they're waiving a specific right to request  
11 an oral hearing to contest the D & R.

12 MR. VINATIERI: This is Joe.

13 There's two policy issues going on here and  
14 Marcy is focused on them, and there's a right to have a  
15 taxpayer to have their day in court with the elected  
16 Board members basically. And that's a very, very  
17 important right that they possess in California unlike  
18 any other State in the United States.

19 So I -- and when I initially looked at this I  
20 thought, you know, this is a good way of speeding things  
21 up, but I understand Marcy's concern. I'm of the  
22 opinion that that right from a policy standpoint should  
23 probably outweigh doing away with the right to go to the  
24 Board.

25 And so, therefore, what I would suggest is you

1 go ahead, go ahead and allow them to go to the Board but  
2 perhaps when it comes to Board hearing, maybe you have a  
3 specific calendar, one day, that's basically small tax  
4 cases.

5           So that there's a couple times a year -- and  
6 let's be candid here, the reason this is happening is  
7 because there's a lot of things on the calendar, and  
8 this is a way of kind of cutting down the calendar for  
9 the Board to hear, so let's understand that.

10           So maybe what you do is the way that you cut it  
11 down is by just having a half a day or one day where you  
12 just have -- you hear these cases. Instead of getting  
13 35 minutes, they get 20 or 15 minutes or whatever it  
14 might be.

15           MS. RUWART: Steve, yes.

16           MR. KAMP: I think your comments, I think  
17 you're trying to solve one problem and the other problem  
18 you end up creating, you're also shutting aside these  
19 small taxpayers.

20           The Board rejected a proposal earlier this year  
21 to line them up by the amount of dollars at stake. And  
22 one thing, from a Board member's office perspective, I  
23 personally always found it interesting, one minute we're  
24 hearing a big unitary case, next, a small taxpayer who  
25 has got an issue is having their day in court.

1 Everybody is on an equal footing here. And I think  
2 that's what I think you lose if you end up creating like  
3 a small taxpayer day.

4 That's all I have to say on that one.

5 MS. CROCETTE: This is Sabina.

6 MS. MATULICH: I'm on the telephone.

7 MS. RUWART: I'm sorry.

8 MS. MATULICH: Diane Matulich on the telephone.

9 I entirely agree with Marcy Jo that there needs  
10 to be the ability for small taxpayers to have the oral  
11 hearing before the Board. They shouldn't be precluded  
12 from that. And especially the small taxpayer, who may  
13 not understand all the proceedings of the Board and they  
14 get the information in the mail, they may not understand  
15 it. I think it's important that it allow them to be  
16 able to go to the Board. Some of them don't know their  
17 representative. I used to work for the Board. A lot of  
18 them would go on their own.

19 MS. RUWART: Very good.

20 Sabina?

21 MS. CROCETTE: This is Sabina with Betty Yee's  
22 office.

23 I think a middle ground, because although I do  
24 appreciate and agree that they should know all their  
25 rights, and I think Marcy Jo points out that they do

1 have that right to make a presentation, at least three  
2 minutes under the Brown Act, and that would be an  
3 appropriate clarification. But it defeats the purpose  
4 of having this, this bifurcation as opposed to speeding  
5 something along if we say, oh, yeah, you get another  
6 chance, oh, yeah, you get another chance. So maybe the  
7 middle ground is to clarify that once it goes to the  
8 nonappearance, that if they want to speak to it, there's  
9 three minutes they can come and speak to it in the three  
10 minutes.

11 And that doesn't add yet another procedure,  
12 which to me defeats the point of the streamlined  
13 procedure. So it acknowledges the truth that they do  
14 have an opportunity to speak with what we already have.

15 But to do the other --

16 MS. MANDEL: Or --

17 MS. CROCETTE: -- what's the point of the  
18 streamline?

19 MS. MANDEL: This is Marcy.

20 You could still have -- I think, you know, I  
21 haven't read these all totally carefully, you could have  
22 a streamlined quick process for small tax cases and not  
23 have a full ugly briefing process that you have for the  
24 major cases or a full ugly hearing that you have for the  
25 major cases. You could -- you could schedule these

1 quickly on a Board calendar, just as quickly as you  
2 would schedule them, you know, if you were putting them  
3 on a nonappearance.

4 MR. SHAH: We prefer the current process where  
5 they are asked if they want to come to the oral hearing.  
6 If they say no, then this comes in the nonappearance  
7 calendar. So even if you go to a simplified briefing  
8 process, we still prefer that the current process remain  
9 after that, where the taxpayer is asked whether they  
10 want an oral hearing or not.

11 MR. HELLER: Brad Heller.

12 I think we pretty much understand everyone's  
13 comments on this position and --

14 MR. AMBROSE: Lou Ambrose, legal.

15 Since this is mandatory for HRA appeals, does  
16 that mean that if, you know, if your version here went  
17 into effect, that HRA claimants would not have a right  
18 to a Board hearing?

19 MR. FOSTER: They would not have the right to  
20 request a hearing. They could only have the hearing if  
21 the Board chose to order one in that particular case.

22 And this decision was made, I mean, to be  
23 honest, to make a good use of administrative resources.  
24 These are things that don't require a lot of resources  
25 to resolve.

1 MS. MANDEL: And they -- and believe me, there  
2 have been how many cases that come to the Board and this  
3 has been -- there's so much work done over so many years  
4 to really handle HRA more appropriately. There's really  
5 way less going on in HRA than there used to be, from  
6 what I understand.

7 But was your intent, following up on Lou's  
8 comment, that there would be a calendar under your  
9 proposal, consent calendar of some kind, and if someone  
10 was pulling something, a Board member would then say,  
11 no, just, you know, I have a laundry list of case names  
12 here, and I want No. 17, No. 18, No. 19, set those for  
13 public hearing, that the Board member would make a  
14 decision, like we're pulling cases off to make them  
15 adjudicatory?

16 When does -- when is the discretion thing  
17 happening, and how is that request being made?

18 MR. FOSTER: We haven't gone through every nut  
19 and bolt. We didn't want to set those kinds of  
20 procedures in stone in the regulation. We simply left  
21 it open because we can't tell the Board that they can't  
22 order an oral hearing on a case.

23 MS. MANDEL: Yeah, okay. All right.

24 MS. RUWART: All right.

25 MR. HELLER: We will take all those comments

1 under consideration.

2 MS. RUWART: Yes.

3 Subsection (d), any more comments?

4 Moving to Subsection (e), the briefing  
5 schedule. Well, is there any particular comment on  
6 (e)(1), "The perfected appeal shall constitute the  
7 taxpayer's opening brief," any different comment than  
8 was made before, similar language?

9 Okay. (e)(2) Franchise Tax Board has 60 days  
10 to file an opening brief. Any comments?

11 MS. MANDEL: Which page are you on?

12 MS. RUWART: I'm on page nine of the --

13 MS. MANDEL: Okay.

14 MS. RUWART: I started on page eight and I  
15 flipped over to page nine. I'm on subsection (e), the  
16 briefing schedule. So (e)(1), nothing. (e)(2),  
17 anything? (e)(3), the reply brief timing? Okay. Very  
18 good.

19 Are there any other comments on this Article 3,  
20 the small claims and tax? I think we had a really good  
21 discussion, definitely.

22 What I'd like to do -- it's 11:25. We'd like  
23 to get this wrapped up by 12:30. How about a  
24 five-minute break? Everybody back here at 11:30.

25 (Recess taken, 11:26 to 11:34 a.m.)



1 MS. RUWART: We've given everybody about six or  
2 seven minutes. Most of our speakers are here.  
3 Everybody ready? Okay. I'll be ready to go on the  
4 record now.

5 I'm Carole Ruwart, Board's Legal Department.  
6 And we're here to pick up where we left off. We have  
7 Article 4 and 5 revised to go through. Our ideal is to  
8 be out of here at 12:30, but we will take as long as it  
9 takes to have the discussions that are necessary.

10 We want to take advantage -- we want to focus  
11 our discussion on the points that are where we can take  
12 full advantage of the fact of all the people in the room  
13 and on the phone.

14 With that said, Article 4 deals with Appeals  
15 Conferences, Board Hearings, Decisions and Opinions. I  
16 would like Ian Foster to briefly review for us where the  
17 major changes are from the original and then we will go  
18 through them accordingly.

19 MR. FOSTER: In a nutshell, the original was  
20 deleted. The changes are -- that's why there is not an  
21 underlined, strike-through version. The original was  
22 deleted in its entirety here. This is a complete  
23 departure from the original and a complete departure  
24 from our existing practice. So these are all entirely  
25 new.

1 MS. RUWART: Is there anything in the original  
2 Article 4 that survived?

3 MR. FOSTER: I think the provision on formal  
4 opinions and the standards for making formal opinions  
5 survived, and the provision on the standards for  
6 opposing frivolous appeals survived.

7 MS. RUWART: So all the procedural aspects have  
8 been substantially revised. Maybe the easiest thing to  
9 do then is, our Section 4040, the appeals conference, is  
10 quite lengthy. It has six separate subsections.

11 Ian, is there anything you wanted to add, since  
12 the -- what you said at the beginning, what we should be  
13 looking for when we go through each subsection?

14 MR. FOSTER: It's a very simple structure.  
15 It's simply the appeals conference is scheduled, Board  
16 Proceedings handles the scheduling. There's provisions  
17 for proper notice and waiver of appearance or  
18 rescheduling. Then there's a provision that describes  
19 the conduct of the appeals conference and then also a  
20 provision on additional evidence and briefing.

21 MS. RUWART: Okay. Very good.

22 MR. DANOWITZ: Steve Danowitz. Could I just  
23 ask a general question about this whole appeals  
24 conference?

25 MS. RUWART: Yes.

1 MR. DANOWITZ: Would it require additional  
2 staff positions and have they been budgeted?

3 MR. HELLER: It's very likely that it would  
4 require additional staff positions and it would require  
5 appeals conference for possibly every case that goes to  
6 a Board hearing, including many that won't even go to a  
7 Board hearing that would be resolved by the appeals  
8 division.

9 You might have noticed that our streamlined  
10 small tax procedures might have helped alleviate some of  
11 those concerns. But generally, yes, that would require  
12 additional staff. And we're making arrangements to try  
13 to be in a position to implement it with the staff that  
14 we have, if necessary, before, you know, we can work  
15 with the State to see about, you know, new hiring, new  
16 positions, which we have not been told that we will be  
17 guaranteed or anything to that effect. So that is an  
18 issue for us, absolutely.

19 MR. DANOWITZ: And one other just general  
20 question. Ian, in the beginning, this morning when you  
21 were pointing this out, you know, about uniformity, and  
22 you mentioned that it would cut down on Board requests  
23 for additional briefing and it would cut down on, you  
24 know, the need for rehearings. Any order of magnitude  
25 how many cases the Board asks for additional briefing?

1 MR. FOSTER: I haven't quantified it. I mean,  
2 I know there's -- Marcy's saying this many (indicating).

3 MS. RUWART: Marcy, could you explain that for  
4 the people on the phone?

5 MR. VINATIERI: About an eighth of an inch.

6 MS. MANDEL: I mean, there's differences  
7 between, from my standpoint -- this is Marcy --  
8 differences between true additional briefing where, in a  
9 case some legal issue is raised or there's, you know,  
10 something like that where we ask for additional  
11 briefing, and then there's the famous 30-30-30 that  
12 happens sometimes in sales tax cases.

13 The 30-30-30 is -- usually has to do with  
14 documentary evidence, that the taxpayer comes in and  
15 says I have this, I have that, I have my four boxes here  
16 that the auditor never even bothered to look at kind of  
17 thing.

18 And, you know, some people might say, well,  
19 that was an occasion where the Board didn't decide the  
20 case and it went back out for staff review, but it  
21 wasn't actually really additional briefing. The  
22 instances where the Board has asked for specific  
23 post-hearing briefing, I think, is pretty rare.

24 MR. FOSTER: It is rare. The 30-30-30, as  
25 Marcy said, is more common.

1           For those of you that aren't aware, that's when  
2 the taxpayer gets 30 days to provide additional  
3 evidence, FTB gets 30 days to respond, and Appeals get  
4 30 days to write a recommendation.

5           We are hoping that appeals conferences would  
6 definitely cut down on these 30-30-30 cases by getting a  
7 lot of documentary evidence issues and factual disputes  
8 resolved at the appeals conference so that by the time  
9 it gets to the Board, that's all been taken care of.

10          MS. RUWART: Chris.

11          MR. SMITH: Chris Smith, Betty Yee's office.  
12 Just one follow-up on that. I think one thing that's  
13 not necessarily additional briefing, but hopefully this  
14 will cut down on is, sometimes in the hearing summaries  
15 there will be a comment from the appeals attorney they  
16 should bring this to the hearing or they should bring  
17 this document, they should be prepared to discuss the  
18 relevance of this issue at the hearing. Hopefully that  
19 would kind of firm up a lot of these issues and flesh  
20 these out before the actual hearing and clean up what  
21 we're asking for in the summary to be done to help staff  
22 be better prepared.

23          MR. LANGSTON: This is Bruce Langston from  
24 Franchise Tax Board. FTB has a number of serious issues  
25 with this proposal. And part of it is, we believe this

1 would cost a lot in personnel time for FTB. You're  
2 adding a whole separate structure. You're lengthening  
3 the time to go to appeals. In the case of a deficiency  
4 appeal, you are delaying the time for collecting these.

5 MS. MANDEL: Which increases cost to taxpayers.

6 MR. LANGSTON: Which increases cost to  
7 taxpayers, increases interest if it's a refund claim.

8 If it's done in every case, instead of just  
9 cases that are going to oral hearing, then, again, you  
10 have created one more step. Most cases do not go to  
11 hearing. The vast majority of appeals that are filed do  
12 not go to oral hearing. And if the justification for  
13 this is to prepare cases that are going to go to oral  
14 hearing, then we think it's way overbroad to include it  
15 in every single appeal.

16 One of the concerns we have had, and I'm  
17 passing on some of our other FTB staff, is, there's a  
18 concern that it will undercut the protest and settlement  
19 process at the FTB, because right now, you know, there  
20 is a motivation for taxpayers to settle their cases at a  
21 lower -- at a lower level, that is, at the FTB level, or  
22 to resolve a protest at the lower level.

23 What we have found is, if a taxpayer has  
24 another avenue, they're going to hold back at protest  
25 and settlement, save their documentation, save their

1 arguments for the Board, perhaps the settlement  
2 conference. So we have a concern about that as well,  
3 that, in fact, we may be increasing the number of cases  
4 that go to appeal as opposed to being resolved at the  
5 FTB level.

6           You know, some of the other issues, you know,  
7 we have just some practical issues dealing with the  
8 conferences. Are they going to be done by telephone?  
9 Are FTB staff going to have to travel more to the Board  
10 offices? Is it expected these will be done by attorneys  
11 or by auditors or by field office staff?

12           Again, those can be worked out if and when this  
13 goes forward, but I think, if I can synthesize a lot of  
14 our comments, we do believe that in some cases this may  
15 be a valuable or valid procedure, but we are hoping that  
16 it could be cut down to the cases that it would really  
17 help and not be mandatory for every single case.

18           Perhaps, as Ian pointed out, it was designed  
19 for the more complex, high-dollar cases. You know, we  
20 could see some value there, where there's factual  
21 development.

22           It's not clear how long these appeal  
23 conferences are going to take. We have protest hearings  
24 that take days. I don't think anyone's expecting to  
25 spend a week at a single appeals conference, but that

1 sort of needs to be tightened up before we can really  
2 give an opinion. I mean, are we talking about all  
3 morning for an appeals conference on a big case? Are we  
4 talking about 20 minutes? You know, that -- I think  
5 maybe the people in this room would have some ideas on  
6 stuff like that. So briefly, we will be submitting  
7 comments.

8 MR. FOSTER: Very good. And I look forward to  
9 it, Bruce. A lot of your comments and points are very  
10 well taken.

11 And what I can respond to is your concern about  
12 the sort of nuts-and-bolts logistical problems of how to  
13 go forward with the appeals conferences themselves, if  
14 and when they happen. We deliberately left those kind  
15 of details out of a regulation because we didn't want to  
16 set anything in stone and then find out that it didn't  
17 work.

18 MS. PELLEGRINI: This is Debbie Pellegrini.

19 This is modeled after what we would do with  
20 business tax cases. Appeals conferences start out  
21 scheduled for one hour. That's what we're looking at.  
22 We go to the attorney that's going to be holding the  
23 appeals conference, they review the case before  
24 scheduling and then give an indication of how long the  
25 appeals conference will take. And yes, most of them are



1 an hour to two, but there have been some that are  
2 scheduled initially for more time. So there's that give  
3 and take right there.

4 It could be that the representative goes back  
5 and says, "How long do you have me scheduled for? Two  
6 hours? That's not going to be enough time. I really  
7 want four." And those are often accommodated.

8 And that's, again, not regulatory nuts and  
9 bolts, but kind of using our business tax cases as a  
10 model.

11 MS. RUWART: Are there any other comments just  
12 globally about this whole idea before we get into the  
13 nuts and bolts of this particular regulation?

14 MR. DANOWITZ: I guess I would just question  
15 whether it's appropriate to import the procedure from,  
16 you know, sort of the business taxes world into the  
17 adjudicatory world. And the Board sort of has two  
18 different roles -- or maybe more than two different  
19 roles -- but the Franchise Tax appeals are a different  
20 role for the Board than the business tax appeals, and it  
21 just may not translate.

22 MR. PENILLA: This is Jess Penilla. I have a  
23 comment. The comment that Bruce made a minute ago about  
24 who will be handling these from the State side, I mean,  
25 without getting into all the detail, my preference would

1 be to meet with an attorney and let the attorney resolve  
2 it.

3 MS. RUWART: Chris?

4 MR. SMITH: Is this sort of a briefing problem  
5 where if both parties agree to have an appeals  
6 conference, have some sort of oral briefing for the  
7 appeals attorney and then there's some procedure where  
8 both parties could say yeah, we both agree that this  
9 would be an appropriate avenue to take, and put it,  
10 like, maybe in part of the briefing schedule, and that  
11 would just limit it to those cases that are going before  
12 the Board where both the FTB and the taxpayer agree that  
13 an appeals conference would be appropriate to settle out  
14 the --

15 MS. MANDEL: That -- this is Marcy -- that  
16 would fit with the concept of having a prehearing  
17 conference so that it's organized for presentation  
18 before the Board. And if that's the purpose of it, if  
19 the purpose of it is that some people may want to have a  
20 more organized hearing, but . . .

21 MS. RUWART: I saw a hand back there.

22 MR. DALY: Charles Daly. If the basic problem  
23 is factual development, an adequate factual development  
24 at the FTB level, could this be resolved by some kind of  
25 remand procedure, sending it back to FTB rather than